IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 147 of 2000

CRA.395/1996 of V ADDL.SESSIONS COURT, ERNAKULAM
CC.750/1994 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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REVN. PETITIONERS/APPELLANTS/ACCUSED NO.1 & 2:

1. GEORGE, S/O JOSEPH, HOUSE NO.XV/89,
HOUSING BOARD COLONY
NAZARETH DESOM, RAMESWRAM

2. ROXAN ALIAS ROCHAN, S/O POSEPH
DO. DO.

BY ADV. SRI.T.N.HAREENDRAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/11/2007, THE COURT ON 29/11/2007 PASSED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.R.P.No.147 OF 2000

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Dated this the 29th day of November 2007

ORDER

This revision petition filed under Sections 397 and 401 of the Code Criminal Procedure is directed against the order of conviction and sentence passed against the petitioners under Sections 323, 324 and 325 read with Section 34 IPC. Petitioners are father and son. Petitioner no.1 was convicted under Section 323 and sentenced to pay a fine or Rs.1,000/- and in default to undergo simple imprisonment for three months. He was convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.4,000/- and in default to undergo simple imprisonment under Section 324 IPC. He was also found guilty under Section 325 IPC and sentenced to undergo rigourous imprisonment for two years and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for six months. Petitioner No.2/accused No.2 was sentenced to pay a fine of Rs.1,000/- and 4,000/- respectively under Sections 323 and 324 with default

sentence. Under Section 325, petitioner No.2 was directed to suffer simple imprisonment for one day and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for six months.

2. The appellate court while confirming the order of conviction under Sections 323 and 324 against the petitioners found that the conviction under Section 325 was not warranted and therefore it was set aside. Similarly, the sentence of imprisonment of one year awarded to petitioner No.1 under Section 324 was set aside and his sentence was modified to that of fine only. In other words, the petitioners are now directed to pay only a fine under Sections 323 and 324. The above order of the appellate court is under challenge in this revision petition.

3. The prosecution had examined PWs 1 to 8 before the trial court and Exts.P1 to P4 were also marked. DW1 was examined on the side of the defence. The trial court on careful consideration of the oral and documentary evidence, accepted the prosecution case and accordingly petitioners

were found guilty under Sections 323, 324 and 325 read with Section 34 IPC.

4. The prosecution case was that on October 17, 1994 at about 6 p.m. an altercation had taken place between PW1 and the accused near a water tap at Nazrath Housing Colony. According to PW1, accused No.1 had hit him on his face while he was taking water from the tank. He lost an incisor tooth on the upper jaw because of the assault. Thereafter, accused No.1 had hit him on his chest also. When he fell down, accused No.1 had hit him with an iron rod. PW2 had intervened in the matter. The prosecution case appeared to be that PW1 had pushed aside a small girl of about 12 years old to one side and tried to take water ahead of his turn from the public water tap. This had infuriated the accused which resulted in the altercation. PWs2 to 4 had corroborated the version given by PW1. The trial court had mainly relied on the evidence of these witnesses and entered the finding of guilty against the petitioners as indicated above. But the appellate court found that the prosecution had not established

the charge under Section 325 IPC against the petitioners. Similarly the tooth which was allegedly dislodged was also not produced before the court. The appellate court therefore took the view that it would not be proper to hold the petitioners guilty under Section 325 IPC.

Having perused the oral and documentary evidence on record, I do not find any illegality or irregularity in the findings entered by the trial court as well as the appellate court. In my view, the appellate court was justified in deleting the substantive sentence of imprisonment against petitioner No.1 imposed on him under section 324 IPC. Having regard to the entire facts and circumstances, I do not find any merit in the revision petition. Accordingly, it is dismissed.

(A.K.BASHEER, JUDGE)

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A.K.BASHEER, J.

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Crl.R.P.No.147 OF 2000
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ORDER

Dated 29th Nov. 2007